

Matthew J. Sekits, WSBA #26175  
E-mail: matthew.sekits@bullivant.com  
BULLIVANT HOUSER BAILEY PC  
925 Fourth Avenue, Suite 3800  
Seattle, Washington 98104  
Telephone: 206.292.8930

Attorneys for Defendant Factory Mutual  
Insurance Company

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

WASHINGTON STATE  
UNIVERSITY,

Plaintiff,

v.

FACTORY MUTUAL INSURANCE  
COMPANY, a Rhode Island  
corporation,

Defendant.

No.: \_\_\_\_\_

NOTICE OF REMOVAL OF  
DEFENDANT FACTORY MUTUAL  
INSURANCE COMPANY

TO: Clerk of the Court

AND TO: Washington State University, Plaintiff

AND TO: Seth H. Row and K. Michael Fandel, Attorneys for Plaintiff

Under 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Factory Mutual  
Insurance Company (FM) removes to this Court the state court action described  
below. In support of this Notice, FM states as follows:

1. On July 2, 2021, Plaintiff filed a Complaint against FM in Whitman  
County Superior Court (*Washington State University v. Factory Mutual Insurance  
Company*, Case No. 21-2-00095-38 (State Court Action)).

2. FM was served through the Washington Office of the Insurance Commissioner, on July 14, 2021.

3. Under 28 U.S.C. §1446(b), FM timely files this Notice of Removal.

#### **A. Jurisdiction**

4. The State Court Action can be removed to this Court under 28 U.S.C. §1441(b), because this Court has original jurisdiction under 28 U.S.C. §1332(a).

5. The matter in controversy meets the monetary jurisdictional threshold. Plaintiff brings contractual and extra-contractual claims against FM.<sup>1</sup> In support of these claims, Plaintiff alleges it is entitled to coverage under an insurance policy Plaintiff purchased from FM for financial losses Plaintiff purportedly suffered because of COVID-19, and that this amount is “not less than \$63,068,573.”<sup>2</sup>

6. FM adamantly denies that it is liable for these claims or that they even apply in this case. That said, Plaintiff, through its Complaint, places in controversy more than \$75,000, exclusive of costs and interest.<sup>3</sup>

7. In addition, complete diversity exists between the parties.<sup>4</sup>

8. FM is a Rhode Island corporation with its principal place of business in Johnson, Rhode Island. That is, FM’s citizenship is in Rhode Island.

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<sup>1</sup> Complaint at ¶¶ 116, 125.

<sup>2</sup> Complaint at ¶ 116.

<sup>3</sup> See *Grieff v. Brigandi Coin Co.*, 2014 WL 2608209, at \*1 (W.D. Wash. June 11, 2014) (indicating that Complaint may be relied on for amount in controversy) (citing *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007)); see also *Hayes v. Equitable Energy Resources Co.*, 266 F.3d 560, 573 (6th Cir. 2001) (“We agree that a fair reading of the unspecified and unliquidated damages sought by Plaintiffs provided that more than \$75,000 was in controversy.”); *Brown v. Paducah & Louisville Ry., Inc.*, 2013 WL 5273773, at \*3 (W.D. Ky. Sept. 17, 2013) (“[T]he amount in controversy may be established by drawing reasonable inferences based on the nature and extent of the damages requested in the complaint.”).

<sup>4</sup> See *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“[A]t this stage of the case, the defendants were merely required to allege (not to prove) diversity . . .”).

1           9.     Plaintiff is a state university that is considered a political subdivision  
2 of the state. Accordingly, it is a citizen of that state for diversity purposes.<sup>5</sup>

3           10.    Because Plaintiff is not a citizen of Rhode Island, complete diversity  
4 exists with respect to FM.

5 **B.     Venue**

6           11.    Venue is proper in the United States District Court for the Eastern  
7 District of Washington because it is the district embracing the place where the  
8 State Court Action is pending.<sup>6</sup>

9 **C.     Intradistrict Assignment**

10          12.    Assignment is proper in the Spokane Division because that is the  
11 division embracing the State Court Action in Whitman County.<sup>7</sup>

12 **D.     Procedural Removal**

13          13.    In accordance with 18 U.S.C. § 1446(a), a true, correct, and complete  
14 copies of the process, pleadings, and orders, if applicable, as well as all additional  
15 records and proceedings in the State Court Action are attached to this Notice of  
16 Removal.

17          14.    In accordance with 28 U.S.C. § 1446(d), FM will submit a Notice to  
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19 <sup>5</sup> *Moor v. County of Alameda*, 411 U.S. 693, 717, 93 S. Ct. 1785, 1799, 36 L. Ed. 2d 596 (1973)  
20 (“[T]his Court has recognized that a political subdivision of a State. . . is a citizen of the State for  
21 diversity purposes”); *Postal Telegraph Cable Company v. Alabama*, 155 U.S. 482, 487, 15 S. Ct.  
22 192, 194, 39 L. Ed. 231 (1894); *University of Rhode Island v. A.W. Chesterton Co.*, 721 F. Supp. 400,  
402 (D.R.I. 1989) (holding the University of Rhode Island is a citizen of the State of Rhode Island  
for the purposes of diversity jurisdiction).

23 <sup>6</sup> See 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State court of which the district courts of  
the United States have original jurisdiction, may be removed by the defendant . . . to the district court  
of the United States for the district and division embracing the place where such action is pending.”);  
24 *Polizzi v. Cowles Magazines, Inc.*, 345 U.S. 663, 666, 73 S. Ct. 900, 97 L. Ed. 1331 (1953).

25 <sup>7</sup> See 28 U.S.C. § 1441(a); *Garcia v. Courtesy Ford, Inc.*, 2006 WL 2439815, at \*1 (W.D. Wash.  
26 Aug. 22, 2006) (concluding that because the Seattle Division ““embraces”” King County, venue is  
proper before the Seattle Division under 28 U.S.C. 1441(a)).

1 Plaintiff and the State Court Clerk of the removal to the U.S. District Court, in  
2 Whitman County Superior Court, attached to which will be a copy of this Notice.

3 15. By filing this Notice, FM does not waive and it expressly reserves all  
4 rights, defenses, or objections of any nature that it may have against Plaintiff's  
5 claims.

6 DATED: August 12, 2021

7 BULLIVANT HOUSER BAILEY PC

8  
9 By /s/ Matthew J. Sekits

10 Matthew J. Sekits, WSBA #26175  
E-mail: matthew.sekits@bullivant.com

11 Attorneys for Defendant Factory Mutual  
12 Insurance Company  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 12, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

Seth Row  
Miller Nash Graham & Dunn LLP  
3400 U.S. Bancorp Tower  
111 S.W. Fifth Avenue  
Portland OR 97204  
Email: seth.row@millernash.com

K. Michael Fandel  
Miller Nash Graham & Dunn LLP  
Pier 70  
2801 Alaskan Way, Ste. 300  
Seattle, WA 98121-1128  
Email: Michael.fandel@millernash.com

Dated: August 12, 2021

/s/ Sally Gannett  
Sally Gannett, Legal Assistant